IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1120 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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MAHENDRA LALBHAI SHAH - Appellant(s)
Versus
DILIPSINH SOMABHAI MAKWANA & 3 - Defendant(s)

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Appearance :
MR MC BHATT for Appellant(s) : 1,
None for Defendant(s) : 1, 3,
NOTICE SERVED for Defendant(s) : 2,
MR HARDIK C RAWAL for Defendant(s) : 2,
MR AJAY R MEHTA for Defendant(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 23/08/2006

ORAL JUDGMENT

1. By way of this appeal, the appellant has challenged the judgement and award dated 30.09.82 passed by the Motor Accident Claims tribunal (Aux.), Ahmedabad District (Rural) at Narol in MACP No. 556 of 1980 whereby the Tribunal has awarded an amount of Rs. 35,986/- by way of compensation to the original claimants payable by the original opponent nos. 1 & 2.

2. The original claimant who is the present appellant had filed claim petition claiming compensation in respect of the vehicular accident which occurred on 15.04.80 while the appellant with his family members was going to Palitana from Ahmedabad in an S.T bus driven by original opponent no.1 in a rash and negligent manner. On the Ahmedabad-Bhavnagar road near village Kalyangadh, the bus dashed with a motor truck bearing no. GTX 8951 from behind thereby injuring the appellant on his right hand and other parts of the body. The claim petition came to be filed under the said circumstance. The Tribunal after hearing the parties passed the aforesaid award.

3. Mr Thakore, learned counsel for the appellant has contended that the total amount of compensation awarded by the Tribunal is on the lower side as the Tribunal has wrongly assessed the monthly income of the appellant at Rs.1000/- only without taking into consideration the relevant evidence produced on record. He has further contended that in view of the decision of the Apex Court in the case of ***"U.P. State Road Transport Corporation and Ors. Vs. Trilok Chandra &***

Ors." reported in 1996(3)GLR 136 the monthly income should have been on the higher side.

4. Mr Hardik Rawal, learned counsel for the respondent has supported the award of the Tribunal and has submitted that the monthly income considered by the Tribunal is just and proper. He has further submitted that though the doctor had deposed that the medical disability of the appellant was at 27.88% which comes to 13.5% with respect of overall disability, the Tribunal without any cogent reason has proceeded with the disability at 20%. However, even if the principle laid down in the case of U.P.S.R.T.C (supra) is considered, the new loss of income per month shall come to Rs. 81/- as against Rs. 80/- assessed by the Tribunal thereby making no major difference.

5. Heard learned counsel for the parties. I have gone through the award of the Tribunal and the relevant documents placed on record. As regards the contention of monthly income is concerned, the Tribunal has assessed the monthly income of the

appellant at Rs. 400/- per month in the absence of sufficient documentary evidence to support his claim of Rs. 1000/-. However, perusal of the records shows that the claimant himself had admitted before the hospital authorities that his monthly income was Rs. 400/- and the same is reflected in Ex. 84. In that view of the matter, I am of the opinion that the Tribunal in absence of relevant evidence and after considering the admission of the appellant himself has assessed the monthly income of the appellant at Rs. 400/- which is just and proper and in accordance with law.

5.1 As regards the submission of the learned counsel for the respondent about medical disability is concerned, the same is required to be accepted in-as-much as the documentary evidence is also clear about the said fact.

5.2 In view of the fact that the monthly income of the appellant is confirmed at Rs. 400/-, even if the principle laid down in the case of U.P.S.R.T.C (supra) is considered, the loss of income per month

shall come to Rs. 81/-(600*13.5%). However, since the Tribunal has already considered the monthly income at Rs. 80/- this Court is of the opinion that no fruitful purpose will be served by disturbing the entire award as there would not be any substantial change in the amount of the award.

6. In the premises aforesaid, the appeal is dismissed. No order as to costs.

(K.S. JHAVERI, J.)

Divya//